

To: Adm13McCarthy, Gina[Adm13McCarthy.Gina@epa.gov]
Cc: Blumenfeld, Jared[BLUMENFELD.JARED@EPA.GOV]
From: Fritz, Matthew
Sent: Thur 3/12/2015 2:39:16 PM
Subject: FW: Background and Talking points re Potential Gov Brown Bay Delta Meeting w Administrator

Administrator,

Jared was thinking along with you and sent this last night.

From: Blumenfeld, Jared
Sent: Wednesday, March 11, 2015 9:28 PM
To: Rupp, Mark; Fritz, Matthew
Cc: Kopocis, Ken; Giles-AA, Cynthia
Subject: Background and Talking points re Potential Gov Brown Bay Delta Meeting w Administrator

Bay Delta Conservation Plan (BDCP) New Direction

RECENT HISTORY:

(1) The BDCP, as currently defined, is a Habitat Conservation Plan (HCP) for continued operation of the State Water Project (SWP) by the California Department of Water Resources (DWR). The proposed federal actions in the existing Draft EIS are approval of that HCP by the National Marine Fisheries Service and U.S. Fish and Wildlife Service under section 10 of the Endangered Species Act, and continued operation of the Central Valley Project (operated in coordination with the SWP) by the Bureau of Reclamation. Separately, BOR was to pursue ESA section 7 consultation on its operation of the CVP. Approval of the BDCP under ESA Section 10 would provide incidental take coverage to DWR for continued operation of the State Water Project system for 50 years.

(2) EPA and others had significant concerns with the Plan, primarily regarding water quality impacts in the Delta, but also about vagueness of the habitat restoration program and lack of identified funding for the restoration and mitigation.

- (3) In November, the voters of California passed Proposition 1, which provides \$8 billion in water project funds. Due to the controversy around the BDCP, particularly about adding new intakes and tunnels in the north Delta, Proposition 1 specified that none of the funds could be spent on the BDCP project.
- (4) Based on these and other factors, the State and fish agencies now seek to fundamentally change the scope and context of the project. Rather than proposing approval of an HCP for operation of the State Water Project, with construction of new intakes and tunnels presented as a “conservation measure”, they propose to redefine the project as solely a construction project, with BOR pursuing ESA section 7 coverage for the tunnels construction. DWR would be the State lead agency; however, without an HCP, it is unclear how DWR would obtain incidental take coverage under the ESA.
- (5) Currently, the lead agencies plan to incorporate this new revised project definition as a new sub alternative within a “Supplement Recirculation” of the existing DEIS. This may raise NEPA compliance issues, since the Draft EIS and its alternatives were written for an HCP approval action, not a construction project. It is unclear exactly what action by BOR would trigger NEPA.
- (6) We do not know at this point whether or to what extent issues related to water exports will be addressed in the new scaled-back project scope.
- (7) We understand that NMFS and DOI were involved in coming up with this new proposal and are generally supportive of it.
- (8) EPA has been informed of this change in scope orally but has not seen anything in writing. This information is close hold and the State does not plan to disseminate this information until the first of April.
- (9) On another note: A myth has been perpetuated that EPA’s August comments on the Draft EIS were a late and unexpected hit to the project proponents. EPA has been engaged with the federal lead agencies on the BDCP since 2008. We sent comments on the Administrative Draft EIS in 2012 and 2013, and reviewed the public draft in 2014. Many if not all of the comments raised in August were raised before and largely ignored by the lead agencies.

TALKING POINTS:

- (1) We are digesting this information and have not yet seen anything in writing. Reframing the proposed project as a construction project is more straightforward than was the HCP approach; however, it raises a number of questions and issues that have not yet been addressed.
- (2) We will need to consider the NEPA aspects of this approach. It may be preferable for BOR to issue a new scoping notice and a Revised DEIS given the new scope. Material provided in the

existing DEIS can be used wherever practical.

(3) Substantial environmental issues raised in our comments on the Draft EIS may remain under the new approach. The operation of the tunnels could violate water quality standards. The tunnels' construction and proposed operation could have negative effects on aquatic species protected under the ESA and CWA.

(4) We remain committed to working with all of the agencies on this project.

Jared Blumenfeld
U.S. EPA
Regional Administrator
Pacific Southwest

415-947-8702